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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,253	10/27/2003	Tim Roland	4041A-000010	2690

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HARNES, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/694,253

Applicant(s)

ROLAND ET AL.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,7,10-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,10-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the reply filed on January 12, 2007.
2. Claims 1, 6, 7, 10 through 15, and 17 through 20, all as amended either directly or indirectly, remain in the application.

Response to Argument

3. Applicant's arguments filed on January 12, 2007 have been fully considered but they are not persuasive. First of all, for patentability of the claimed invention, applicant attempts to rely on newly added limitations which are not fully supported in the originally filed disclosure (i.e., on a “*top* blow-out port provided in a *top* back surface of said front seat”, on “a *rigid, smooth* seat back support duct within a seat back support portion”, and which does constitute new matter as described in greater detail below. Second of all, applicant is respectfully reminded that pending claims must be broadly interpreted by the examiner. See 415 F.3d at 1316, 75 USPQ2d at 1329. See also *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Third of all, applicant's arguments related to the GB 2 208 542 A prior art reference as applied appear to be based on an incomplete perusal of the prior art reference. The cited disclosure from the abovementioned prior art reference refers to the embodiments of Figures 1 and 2 thereof which were NOT relied upon by the examiner; the examiner relied on Figure 3 of the reference, which shows a plenum 34 on the outer (i.e., “top”) surface of the back of front seat 11 as described in lines 6-22 on page 8 and which allows for heated air to be directed in various directions (and not just the feet of the rear seat passengers).

Election/Restrictions

4. All of remaining claims 1, 6, 7, 10 through 15, and 17 through 20 are readable on the elected species. Election was made **without** traverse in the reply filed on December 28, 2005.

Drawings

5. The replacement drawings were received on January 12, 2007. These drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character not mentioned in the description: 13. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. Receipt and entry of the amended abstract filed on January 12, 2007 is hereby acknowledged.

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no antecedent basis in the specification of either "a *rigid, smooth* leading duct member" as now recited in claim 6 or of "a *rigid, smooth* seat back support duct" as now recited in claims 10 through 15. There is also no mention in the specification of "a *top* blow-out port" and "*top* back surface" as now recited in claim 1, for example.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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9. Claims 1, 6, 7, and 10 through 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims as amended now recite “a *rigid, smooth* leading duct member” and “a *rigid, smooth* seat back support duct”, but nowhere in the originally filed disclosure is there any mention of either of these elements. There is also no mention in the originally filed disclosure of “a *top* blow-out port” which is “provided at a *top* back surface of said front seat” as now recited in claim 1 and in claim 10, for example. With regard to the latter, while the drawings show a blow-out port 24 at an upper part of the back surface of the front seat, the common meaning of “top” is synonymous with “uppermost” and the drawings do NOT show the blow-out port 24 as being at the uppermost part of the back surface of the front seat. Thus, these limitations appear to constitute new matter.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 6 and 10 through 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms “rigid, smooth” in claims 6 and 10 through 15 are a relative term which renders the claims indefinite. The terms “rigid, smooth” are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as used to qualify the configuration of the ducts, these terms render the same indeterminate and the corresponding claims indefinite.

Claim Rejections - 35 USC § 102

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12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 6, 10, 13 through 15, and 17 through 19 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2 208 542 A (previously made of record via IDS).

GB 2 208 542 discloses an air conditioning (i.e., heating) apparatus comprising air conditioning or heating unit 15 for a vehicular seat essentially as claimed, including, for example: a generally u-shaped flexible duct member or ducting 27 having various accordion or bellows portions provided at a front seat 11 and located at least in part within the seat bottom portion of seat 11 as shown in Figure 3; a blow-out port at grille 35 connected to the flexible duct member 27 disposed at the outer/"top" back surface of the front seat 11 via an additional "rigid" non-bellows duct member or plenum 34, the plenum and grille or port 35 located within the seat back support portion of seat 11, with a bellows duct portion inherently located at a boundary between a seat portion and a back support portion of the front seat 11 because the duct member or plenum 34 is located in the back support portion of the front seat 11 and the u-shaped flexible duct member 27 is connected to the duct member or plenum 34 and located in the seat portion of the front seat 11; and, a center connection duct or center duct portion 22 disposed in center console 25 and connecting the air conditioning or heating unit 15 to the u-shaped ducting 27.

The reference thus reads on the claims.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claim 7 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 2 208 542 A (previously made of record via IDS).

As discussed in greater detail above, GB 2 208 542 discloses an air conditioning apparatus comprising heating unit 15 for a vehicle seat essentially as claimed, including continuous ducting flexible u-shaped ducting 27 as shown in Figure 3 and as described in greater detail above.

GB 2 208 542, however, does not specify that the ducting 27 as being formed as a single member *by a molding process*. Nevertheless, in addition to hereby taking Official notice that making ducting and piping using a molding process is well-known in the art, it is hereby further noted that “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Thus, it would have been obvious to one skilled in the art at the time of invention to modify the seat air conditioning apparatus of GB 2 208 542 to specifically make the continuous u-shaped ducting 27 as a single member using a molding process in order to simplify manufacture and assembly of the air conditioning apparatus, for example.

Allowable Subject Matter

16. Claims 11 and 12 may be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, first and second paragraphs, as set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

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17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner works a flexible schedule, but can normally be reached weekdays between 10:30 a.m. and 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.


Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

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Ljiljana (Lil) V. Ciric
Primary Examiner
Art Unit 3744